

APR 5 1977

MICHAEL RODAK, JR., CLERK

APPENDIX

**IN THE
SUPREME COURT OF THE UNITED STATES**

October Term, 1976

No. 76-879

THOMAS E. ZABLOCKI, Milwaukee County
Clerk, individually, in his official capacity,
and on behalf of all other persons similarly situated,
Appellant,

v.

ROGER G. REDHAIL, individually and on
behalf of all other persons similarly situated,
Appellee.

**APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
EASTERN DISTRICT OF WISCONSIN**

**APPEAL DOCKETED DECEMBER 27, 1976
JURISDICTION NOTED FEBRUARY 22, 1977**

APPENDIX

**IN THE
SUPREME COURT OF THE UNITED STATES**

October Term, 1976

No. 76-879

THOMAS E. ZABLOCKI, Milwaukee County
Clerk, individually, in his official capacity,
and on behalf of all other persons similarly situated,
Appellant,

v.

ROGER G. REDHAIL, individually and on
behalf of all other persons similarly situated,
Appellee.

**APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
EASTERN DISTRICT OF WISCONSIN**

APPENDIX INDEX

	<i>Page</i>
Chronological List of Relevant Docket Entries	1-3
Complaint, Filed December 24, 1974	4-16
Answer, Filed January 1, 1975	16-19
Order Following Pretrial Conference Filed February 20, 1975	19-20
Statement of Uncontested Facts Filed March 6, 1975	20-24
Findings and Judgment	24-28
Decision of Three-Judge United States District Court for the Eastern District of Wisconsin Filed August 31, 1976	29
Judgment on Decision by the Court Filed August 31, 1976	29
Notice of Appeal, Filed October 28, 1976	29

**CHRONOLOGICAL LIST OF
RELEVANT DOCKET ENTRIES**

- 12/24/74—1 Complaint filed; summons issued.
- 1/6/75—2 Order of Chief Judge Swygert of the 7th Circuit Ct. of Appeals designating Hon. Phillip W. Tone, Circuit Judge, 7th Circuit, Robert W. Warren and John W. Reynolds as members of the 3 judge court in this case.
- 1/6/75—3 Marshal's return of service of summons and complaint served on 12/31/74.
- 1/20/75—4 Pltf's Request for Admission.
- 1/20/75—5 Answer.
- 2/6/75—6 Deft's Answers to Pltf's Request for Admissions.
- 2/18/75—7 Pltfs' Notice of Motion and Motion for entry of an order for Maintainability of a Class Action, with proposed order, supporting affidavit and brief.
- 2/19/75 Status Conf. (JWR) Cases to be heard together (74-C-623 and 74-C-624). Briefs ordered of the parties.
- 2/20/75—8 Order following pre-trial conf. held 2/19/75. 74-C-623 and 74-C-624 consolidated for purposes of hearing by the three-judge court. 74-C-624 may proceed as a class action pursuant to Rule 23(b)(2) of the FRCP on behalf of the class of pltfs. defined in the order, etc.

- 3/3/75—9 Supplemental Memorandum in support of Motion for an order for Maintainability as a Class Action against Deft. Class.
- 3/6/75—10 Statement of Uncontested Facts, filed by the parties.
- 3/27/75—11 Brief in Support of Prayer for Final Declaratory and Injunctive Relief.
- 4/17/75—12 Defts' Brief in opposition to pltfs' prayer for final declaratory and Injunctive relief.
- 4/23/75—13 Plaintiffs' Reply Brief.
- 4/29/75—14 Pltfs' Reply to Defts' Brief against Motions for Preliminary Injunction, maintainability of Class Action, and Striking of Jury Demand.
- 6/11/75—15 Notice of appearance of Steven I. Cohen for Paul Shimek as a member of the pltf. class.
- 6/11/75—16 Memorandum in Support of Alternative Notice and Application of Paul Shimek.
- 6/23/75 Oral Argument taken under advisement. (JWR, Tone, RWW)
- 6/30/75—17 Supplemental Memorandum in Support of Pltfs' Motion for Final Injunctive Relief.
- 8/31/76—18 Decision (Judges Tone, Reynolds and Warren) directing the Clerk to enter judgment in favor of the pltf. Roger G. Redhail and the class he represents, and against

deft. Thomas E. Zablocki and the class he represents declaring 245.10(1), (4) and (5), Wis. Stats. (1973) unconstitutional under the equal protection clause of the Fourteenth Amendment to the US Constitution and invalid, void and of no effect; further, deft. Thomas E. Zablocki, the class he represents, etc. who receive actual notice of the judgment, be permanently enjoined from denying applications for marriage licenses on the grounds that the applicant has failed to comply with the provisions of 245.10(1), Wis. Stats. (1973).

- 8/31/76—19 Judgment entered - copy mailed to the parties on 8/31/76.
- 10/28/76—20 Defts' Notice of Appeal to the Supreme Court of the US from final judgment entered on 8/31/76.
- 10/28/76 Copy of Notice and docket entries mailed to the US court of Appeals, 7th circuit.

Certificate of Clerk

COMPLAINT. Filed December 24, 1974
[Document No. 1]

UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF WISCONSIN

 ROGER G. REDHAIL, individually and
 on behalf of all other persons similarly
 situated,

Plaintiffs,

-vs-

THOMAS E. ZABLOCKI, Milwaukee County
 Clerk, individually, in his official
 capacity, and on behalf of all other persons
 similarly situated,
 Defendants.

Case No. 74-C-624

Preliminary Statement

1. This is a civil action. Plaintiff, individually and on behalf of all others similarly situated, seeks declaratory and injunctive relief for violations of his civil rights resulting from the operation of §245.10(1)(4)(5) WIS. STATS. (1971). The statute is challenged on the grounds that it conflicts with the rights secured by the First, Fifth, Ninth, and Fourteenth Amendments to the United States Constitution.

Jurisdiction

2. Jurisdiction is conferred on this court by 28 U.S.C. §1343. This action is authorized by 42 U.S.C. §1983. Declaratory relief is sought under 28 U.S.C. §2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure.

Three-Judge Court

3. This is a proper case for determination by a three-judge court pursuant to 28 U.S.C. §§2281 and 2284. Plaintiffs seek an injunction to restrain defendants who are state officers, from the enforcement, operation, and execution of a state statute of statewide applicability on the ground that said statute is contrary to the Constitution of the United States.

Parties

4. Plaintiff, ROGER G. REDHAIL is an adult resident of Wisconsin.

5. Defendant THOMAS E. ZABLOCKI is an adult resident of Wisconsin and is the County Clerk of Milwaukee County and in said capacity is responsible for the issuance of marriage licenses in Milwaukee County.

6. Defendant ZABLOCKI is sued individually and in his official capacity. Relief is also sought against his agents, employees, successors in office, assistants, and all other persons acting in concert or cooperation with the named defendant or at his direction or under his control.

7. Defendant ZABLOCKI has been, is presently, and will continue to act under color of authority and law of the State of Wisconsin in refusing to issue marriage licenses to plaintiffs without an order of the Court.

Class Action
Plaintiffs and Defendants

8. This is a class action brought by ROGER G. REDHAIL on his own behalf and, pursuant to 23(b)(2) Federal Rules of Civil Procedure, on behalf of all persons similarly situated.

9. The members of the class of plaintiffs similarly situated are all Wisconsin residents who have minor issue not in their custody and which they are under an obligation to support by any court order or judgment to whom the county clerk has refused to issue a marriage license without a court order, pursuant to §245.10(1) WIS. STATS. (1971).

10. With respect to the class of plaintiffs, the requirements of Rule 23 of the Federal Rules of Civil Procedure are met in that the class is so numerous that joinder of all members is impracticable (the exact membership of the class is indeterminate); there are questions of law and fact common to the class; the representative plaintiff will fairly and adequately protect the interests of the class; and the parties opposing the class have acted on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

11. This is a class action brought against defendant ZABLOCKI individually and, pursuant to Rule 23(b)(2) Federal Rules of Civil Procedure, against all other persons similarly situated.

12. The members of the class of defendants are all county clerks of counties within the State of Wisconsin, all of whom are required by §245.10(1) WIS. STATS. (1971) to refuse to issue marriage licenses to members of the class of plaintiffs without a court order.

13. With respect to the class of defendants, the requirements of Rule 23 of the Federal Rules of Civil Procedure are met in that the class is so numerous that joinder of all members is impracticable, there are questions of law common to the class, the defenses of the representative defendants are typical of the defenses of the class, the representative defendants will fairly and adequately protect the interests of the class, and the plaintiff class opposes the actions of the defendants on grounds generally applicable to the entire class of defendants, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

Factual Allegations

14. In January of 1972, a paternity action was instituted in Milwaukee County against the plaintiff, alleging that he was the father of a baby girl born on July 5, 1970, and that said child was born out of wedlock. (County Court File No. XR-28124).

15. On February 23, 1972, plaintiff, who was then a minor and a high school student, appeared in Milwaukee County Court and admitted that he was the father of said child. The case was then adjourned until May 12, 1972.

16. On May 12, 1972, plaintiff was adjudged to be the father of the baby girl born July 5, 1970; and was ordered to pay \$109.00 per month as support for the child until said child reached 18 years of age, and in addition was ordered to pay miscellaneous related expenses.

17. From May of 1972 until August of 1974, plaintiff was unemployed and indigent, and unable to pay any sum for support of his issue; he has in fact made no such payment for support. Plaintiff is informed and believes that the rights to support payments have been assigned to the

Milwaukee County Department of Public Welfare and there is presently an arrearage in the amount of \$3,732.

18. Plaintiff is informed and believes that his child is a public charge in that said child receives benefits under the Aid to Families with Dependent Children program; plaintiff is informed and believes that said benefits are in excess of \$109 per month.

19. Plaintiff desires to marry. He and the woman he intends to marry are expecting a child to be born to them in early March, 1975, and wish to be lawfully married to one another before their child is born.

20. On September 27, 1974, plaintiff filed an application for a marriage license with defendant ZABLOCKI. On September 30, 1974, an agent of defendant ZABLOCKI informed the plaintiff that defendant ZABLOCKI denied his application for a marriage license and refused to issue a marriage license to plaintiff except upon court order, pursuant to §245.10(1) WIS. STATS. (1971).

21. To obtain a court order requiring defendant ZABLOCKI to issue a marriage license to him, plaintiff must submit proof to the court that he has complied with his prior support obligation and submit proof that his child is not now and is not likely hereafter to become a public charge. Plaintiff is unable to submit proof of compliance with the prior support obligation because he has not in fact complied; he is unable to pay the \$3,732 arrears owing to the Milwaukee County Department of Public Welfare, or any substantial part thereof, and will be unable to pay said amount in the foreseeable future. Plaintiff is unable to submit proof that his child is not a public charge because his child is in fact a public charge.

22. Plaintiff is therefore unable to marry in Wisconsin and, because of the provisions of §245.10(4) and (5) WIS. STATS. (1971), plaintiff is unable to contract a valid marriage elsewhere.

23. Upon information and belief, an indeterminate number of Wisconsin residents desire but are unable to contract a valid marriage, either in Wisconsin or elsewhere, because of the provisions of §245.10(1)(4) and (5) WIS. STATS. (1971).

24. Upon information and belief, defendant ZABLOCKI and all members of the class of defendants have refused and will continue to refuse to issue marriage licenses to members of the class of plaintiffs because of the provisions of §245.10(1) WIS. STATS. (1971).

25. Defendant ZABLOCKI, and members of the class of defendants, in refusing to issue marriage licenses to representative plaintiff and members of the class of plaintiffs, are depriving the class of plaintiffs of rights secured by the United States Constitution under color of state law.

Statutes Involved

26. The challenged statute, 245.10(1)(4) and (5) WIS. STATS. (1971), provides as follows:

"245.10 Permission of court required for certain marriages. (1) No Wisconsin resident having minor issue not in his custody and which he is under obligation to support by any court order or judgment, may marry in this state or elsewhere, without the order of either the court of this state which granted such judgment or support order, or the court

having divorce jurisdiction in the county of this state where such minor issue resides or where the marriage license application is made. No marriage license shall be issued to any such person except upon court order. The court, within 5 days after such permission is sought by verified petition in a special proceeding, shall direct a court hearing to be held in the matter to allow said person to submit proof of his compliance with such prior court obligation. No such order shall be granted, or hearing held, unless both parties to the intended marriage appear, and unless the person, agency, institution, welfare department or other entity having the legal or actual custody of such minor issue is given notice of such proceeding by personal service of a copy of the petition at least 5 days prior to the hearing, except that such appearance or notice may be waived by the court upon good cause shown, and, if the minor issue were of a prior marriage, unless a 5-day notice thereof is given to the family court commissioner of the county where such permission is sought, who shall attend such hearing, and to the family court commissioner of the court which granted such divorce judgment. If the divorce judgment was granted in a foreign court, service shall be made on the clerk of that court. Upon the hearing, if said person submits such proof and makes a showing that such children are not then and are not likely thereafter to become public charges, the court shall grant such order, a copy of which shall be filed in any prior proceeding under §52.37 or divorce action of such person in this state affected

thereby; otherwise permission for a license shall be withheld until such proof is submitted and such showing is made, but any court order withholding such permission is an appealable order. Any hearing under this section may be waived by the court if the court is satisfied from an examination of the court records in the case and the family support records in the office of the clerk of court as well as from disclosure by said person of his financial resources that the latter has complied with prior court orders or judgments affecting his minor children, and also has shown that such children are not then and are not likely thereafter to become public charges. No county clerk in this state shall issue such license to any person required to comply with this section unless a certified copy of a court order permitting such marriage is filed with said county clerk.

(4) If a Wisconsin resident having such support obligations of a minor, as stated in sub. (1), wishes to marry in another state, he must, prior to such marriage, obtain permission of the court under sub. (1),

(5) This section shall have extraterritorial effect outside the state; and §245.04(1) and (2) are applicable hereto. Any marriage contracted without compliance with this section, where such compliance is required, shall be void, whether entered into in this state or elsewhere."

27. §245.30, WIS. STATS. (1971) prescribes the following penalty for violations of 245.10 WIS. STATS.:

"245.30 Penalties (1) The following shall be fined not less than \$200 nor more than \$1000, or imprisoned not more than one year, or both

(f) Penalty for obtaining license without permission of court. Any person who obtains a marriage license contrary to or in violation of §245.10, whether such license is obtained by misrepresentation or otherwise, or whether such marriage is entered into in this state or elsewhere."

28. §245.05, WIS. STATS. (1971) provides that no person shall be joined in marriage within the state until a marriage license has been obtained from the county clerk. All Wisconsin residents over the age of 18, other than those affected by the challenged statute, 245.10 WIS. STATS. (1971), will be issued a marriage license upon application if they meet the requirements of Chapter 245 WIS. STATS. (1971).

29. Plaintiff and the class he represents have no adequate remedies at law and no adequate administrative remedies to secure their right to marry.

30. Plaintiff and the class he represents have suffered and will continue to suffer irreparable injury unless this Court enjoins defendants from continuing the policies, practices and procedures which deny them the right to be issued a marriage license except upon court order.

First Claim for Relief

31. The acts, conditions and practices alleged in paragraphs 1 - 33 constitute a denial of rights secured to the plaintiffs by the 1st, 5th, 9th and 14th Amendments to the United States Constitution and 42 U.S.C. 1983 in that

they create, and treat differently, two classes of Wisconsin residents who desire to marry:

1. Those who have minor children not in their custody whom they are under an obligation to support.
2. All other persons.

Under 245.10 WIS. STATS., a member of the first class who complies with all other provisions of Chapter 245 of the Wisconsin Statutes relating to the issuance of marriage licenses will nevertheless be denied a license by the county clerk except upon court order. To obtain the court's permission to marry, he must submit proof to the court of his compliance with the prior court obligation to support the minor child or children not in his custody and must show that such children are not then and are not likely to become public charges. Absent such proof he will be denied the right to marry either within or outside Wisconsin. Any marriage, wherever solemnized, which is entered into without the required permission of the court is void. §245.10 WIS. STATS. denies the equal protection of the laws to the plaintiff because it constitutes an unjustifiable interference with, and in many cases denial of, the fundamental right to marry and is not necessary to the achievement of any compelling state interest.

Second Claim for Relief

32. The acts, conditions and practices alleged in paragraphs 1 - 33 constitute a denial of rights secured to the plaintiffs by the 1st, 5th, 9th and 14th Amendments to the United States Constitution and 42 U.S.C. 1983 in that they create, and treat differently, two classes of Wisconsin residents:

1. Those who have minor children not in their custody whom they are under an obligation to support but who lack sufficient means to comply with said obligation and/or to assure that said minors are not then and are not likely to become public charges.
2. All other persons.

Under 245.10 WIS. STATS., a member of the first class who complies with all other provisions of Chapter 245 of the Wisconsin Statutes relating to the issuance of marriage licenses will nevertheless be denied a license by the county clerk except upon court order. To obtain the court's permission to marry, he must submit proof to the court of his compliance with the prior court obligation to support the minor child or children not in his custody and must show that such children are not then and are not likely to become public charges. Absent such proof he will be denied the right to marry either within or outside Wisconsin. Any marriage, wherever solemnized, which is entered into without the required permission of the court is void. §245.10 WIS. STATS. denies the equal protection of the laws to those members of the plaintiff class who, because of their impecunity, are unable to make the requisite showing and who therefore sustain an absolute deprivation of their right to marry based solely upon said impecunity even though said deprivation is not necessary to the achievement of any compelling state interest.

Third Claim for Relief

33. The acts, conditions, and practices alleged in paragraphs 1 - 33 constitute a denial of rights secured to the plaintiffs by the 1st, 5th, 9th, and 14th Amendments to the United States Constitution and 42 U.S.C. 1983 in that the challenged provisions interfere with and/or deny plaintiffs

the right to marry in Wisconsin or elsewhere in order to protect state interests which can be secured by a much less drastic interference with said right thus depriving plaintiffs of substantive due process of law.

Prayer for Relief

WHEREFORE, plaintiff, on his own behalf and on behalf of all others similarly situated, prays that this Honorable Court:

1. Assume jurisdiction of this cause, convene a three-judge court pursuant to 28 U.S.C. §§2281 and 2284 to determine this controversy, and set this case promptly for an expedited hearing;
2. Determine by order, pursuant to Rule 23(c)(I) of the Federal Rules of Civil Procedure, that this action be maintained as a class action;
3. Enter a final judgment pursuant to 28 U.S.C. §§2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure, declaring that 245.10(1)(4) and (5) WIS. STATS. (1971) are invalid, void and of no effect.
4. Enter a permanent injunction pursuant to 28 U.S.C. §2284 ordering defendants, their successors in office, agents and employees and all other persons in active concert and participation with them to act upon all applications for marriage licenses without regard to the provisions of §245.10(1)(4) and (5) WIS. STATS.
5. Allow plaintiff his costs herein pursuant to Rule 54(d) of the Federal Rules of Civil Procedure, and also grant him and all persons similarly situated such additional or alternative relief as may seem to this Court to be just, proper and equitable;

6. Grant plaintiff reasonable attorneys' fees incurred in this action.

Dated at Milwaukee, Wisconsin, this 24 day of December, 1974.

/s/ Patricia Nelson
Georgia Lutze
Patricia Nelson
Robert H. Blondis
Attorney for Plaintiffs

P.O. ADDRESS

MILWAUKEE LEGAL SERVICES, INC.
Attorneys for Plaintiffs
211 West Kilbourn Avenue
Milwaukee, WI 53203
414/278-7722

ANSWER. Filed January 20, 1975.
[Document No. 5]

[Title omitted in printing.]

The defendant for answer to the complaint alleges:

1. Defendant does not deny or disagree with plaintiffs preliminary statement in paragraph 1 of the complaint.

2. Concedes jurisdiction to the United States District Court, Eastern District of Wisconsin.

3. Concedes that the case is a proper case to be heard by the three judge court.

4. That he is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph 4 of the complaint.

5. Defendant admits paragraphs 5, 6, and 7 of the complaint.

6. Defendant denies the allegation of paragraph 8 of the complaint that this action is properly brought as a class action.

7. Defendant alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the complaint.

8. Defendant alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the complaint.

9. Defendant denies the allegations in paragraphs 11 and 12 of the complaint.

10. Defendant alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the complaint.

11. Admits all the allegations of paragraph 14 of the complaint except that of the date of birth of the child which is actually July 5, 1971.

12. Admits the allegations of paragraph 15 of the complaint.

13. Admits the allegations of paragraph 16 of the complaint.

14. Defendant alleges that he is without knowledge or

information sufficient to form a belief as to the truth of the allegations contained in paragraphs 17, 18, 19, 20, 21, 22, 23, and 24 of the complaint.

15. Defendant denies the allegations of paragraph 25 of the complaint.

16. Defendant admits that paragraphs 26 and 27 constitute accurate transcriptions of Wisconsin Statute 245.10(1)(4) and (5) and 245.30.

17. Defendant admits the allegations of paragraph 28 of the complaint.

18. Defendant alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 29 of the complaint.

19. Defendant denies the allegations of paragraph 30 of the complaint.

20. Defendant denies the allegations of paragraphs 31, 32, and 33 of the complaint.

WHEREFORE, the defendant prays judgment that the complaint of the plaintiff be dismissed with costs to the defendant.

ROBERT P. RUSSELL
Corporation Counsel

By /s/ David J. Siler
David J. Siler
Assistant Corporation Counsel
Room 303, Courthouse
Milwaukee, Wisconsin 53233

Attorneys for Defendant

Original & 1 copy of ANSWER to:
John W. Reynolds

One copy of ANSWER to:
Patricia Nelson, Legal Services, Inc.
Honorable Philip W. Tone
Honorable Robert W. Warren

One copy of ANSWER & SUMMONS to:
Joseph Salituro

**ORDER following pretrial conference.
Filed February 20, 1975.
[Document No. 8]**

[Title omitted in printing.]

**ORDER FOLLOWING PRETRIAL CONFERENCE
HELD FEBRUARY 19, 1975**

At a pretrial conference held on February 19, 1975, Patricia Nelson and Georgia Lutze appearing for plaintiffs and John Devitt and David Siler appearing for defendants in C.A. No. 74-C-624, and Terry Rose appearing for plaintiff and Joseph J. Salituro appearing for defendant in C.A. No. 74-C-623, and Ward Johnson appearing for the Attorney General in both actions, the following orders were entered.

1. The above-entitled actions are consolidated only for purposes of hearing by the three-judge court.

2. The case of *Redhail v. Zablocki*, No. 74-C-624, may proceed as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure on behalf of the class of plaintiffs defined as follows: all Wisconsin residents who

have minor issue not in their custody and who are under an obligation to support such minor issue by any court order or judgment and to whom the county clerk has refused to issue a marriage license without a court order, pursuant to §245.10(1), Wis. Stats. (1971). Further, in the event that plaintiffs in No. 74-C-624 desire to maintain this action against defendants as a class, they shall file a brief by February 28, 1975, in support of the maintainability of the action as a class action with respect to defendants. Defendants shall file a brief in opposition to the class of defendants by March 14, 1975.

3. Plaintiffs in both actions shall file a statement of uncontested facts with the court by March 5, 1975.

4. Plaintiffs in both actions shall file their briefs with the court by March 26, 1975.

5. Defendants in both actions and the Attorney General shall file their briefs with the court by April 16, 1975.

6. Plaintiffs' reply briefs, if any, shall be filed with the court by April 23, 1975.

Dated at Milwaukee, Wisconsin, this 20th day of February, 1975.

/s/ John Reynolds
U.S. District Judge

STATEMENT OF UNCONTESTED FACTS.

Filed March 6, 1975.

[Document No. 10]

[Title omitted in printing.]

IT IS HEREBY STIPULATED BY AND AMONG THE

PARTIES HERETO through their respective attorneys that the following statement of facts is a true and correct presentation of the events and occurrences which took place concerning the above-entitled case:

1. In January of 1972, a paternity action was instituted in Milwaukee County against plaintiff ROGER G. REDHAIL, alleging that he was the father of a baby girl born on July 5, 1971, and that said child was born out of wedlock (County Court File No. XR-28124). On February 23, 1972, plaintiff REDHAIL appeared in Milwaukee County Court and admitted that he was the father of said child. The case was then adjourned until May 12, 1972.

2. On May 12, 1972, plaintiff REDHAIL was adjudged to be the father of the baby girl born July 5, 1971, and was ordered to pay \$109.00 per month as support for the child until said child reaches 18 years of age, and in addition was ordered to pay miscellaneous related expenses. (A copy of said judgment is attached hereto and marked as "Exhibit 1").

3. At the time of his admission of paternity, plaintiff REDHAIL was a minor and a high school student. From May of 1972 until August of 1974, he was unemployed and indigent and unable to pay any sum for support of his issue.

4. Plaintiff REDHAIL has made no payment for support and as of December 24, 1974, there was an arrearage in excess of \$3732.

5. The child of plaintiff REDHAIL has been since her birth and is presently a public charge, receiving benefits under the Aid to Families with Dependent Children Program. The benefits received by the child are in excess of \$109.00 per month. Said child would be a public charge even if plaintiff REDHAIL were current in the payment of support ordered in the paternity action.

6. Defendant THOMAS E. ZABLOCKI is an adult resident of Wisconsin and is the County Clerk of Milwaukee County and in said capacity is responsible for the issuance of marriage licenses in Milwaukee County, pursuant to §245.05 WIS. STATS. (1971).

7. On September 27, 1974 plaintiff REDHAIL filed an application for a marriage license with THOMAS E. ZABLOCKI.

8. On September 30, 1974, an agent of THOMAS E. ZABLOCKI denied plaintiff REDHAIL's application for a marriage license and refused to issue a marriage license to plaintiff REDHAIL except upon court order, pursuant to §245.10(1) WIS. STATS. (1971).

9. The sole reason for THOMAS E. ZABLOCKI's refusal to issue a marriage license to plaintiff REDHAIL was that plaintiff REDHAIL had failed to comply with §245.10(1) WIS. STATS. (1971).

10. §245.10 WIS. STATS. (1971) provides that a court shall not order a county clerk to issue a marriage license to an applicant who has minor issue not in his custody which he is under obligation to support by any court order or judgment unless such person submits proof that:

A. He has complied with such prior court order of judgment; and,

B. That his issue are not now and are not likely hereafter to become public charges.

11. Plaintiff REDHAIL is unable to submit such proof and therefore is unable under the terms of §245.10 WIS. STATS. (1971) to procure an order of the court requiring defendant ZABLOCKI to issue a marriage license to him.

12. There are 72 counties within the State of Wisconsin. Each county has a county clerk with the same statutory powers as defendant ZABLOCKI regarding the issuance of marriage licenses.

13. No county clerk within the State of Wisconsin can lawfully issue a marriage license to plaintiff REDHAIL without the court order required by §245.10 WIS. STATS. (1971).

14. No county clerk within the State of Wisconsin can lawfully issue a marriage license to any person who has minor issue not in his custody which he is under obligation to support by any court order or judgment without the court order required by §245.10 WIS. STATS. (1971).

15. The exact number of persons who have minor issue not in their custody which they are under obligation to support by any court order or judgment and to whom the county clerk has refused to issue a marriage license without a court order pursuant to §245.10 WIS. STATS. (1971) is indeterminate. Many counties do not keep such statistics, including Dane County. In Milwaukee County alone, in 1974, there were approximately 660 such persons. (Affidavit of Ms. Marion P. Galati, attached to Plaintiff's Memorandum in Support of Motion for an Order for Maintainability of a Class Action, filed 2-14-75).

Dated at Milwaukee, Wisconsin, this 27th day of February, 1975.

/s/ Georgia Lutze
Georgia Lutze
Patricia Nelson
Robert H. Blondis
Attorneys for Plaintiffs

Dated at Milwaukee, Wisconsin this 28th day of February, 1975.

/s/ David J. Siler
Robert P. Russell
Corporation Counsel
By David J. Siler
Assistant Corporation Counsel
Attorneys for Defendants

Dated at _____, Wisconsin this _____ day of _____, 1975

Bronson C. LaFollette
Attorney General
By Ward L. Johnson
Assistant Attorney General

COUNTY COURT

STATE OF WISCONSIN CIVIL DIVISION : COUNTY

STATE OF WISCONSIN, ex rel
DONNA VAN WEELDEN FINDINGS & JUDGMENT
Complainant, XR - 28-124
Plaintiff,

- vs -

CC - _____

ROGER REDHAIL
Defendant.

The above entitled matter having come on to be heard before that branch of the above named Court, presided over by the HONORABLE Robert J. Miech, County Judge, on the 12th day of May, 1972; the plaintiff, State of Wisconsin, appearing by Karl M. Dunst, Assistant Corporation Counsel in and for Milwaukee County, Wisconsin; the complainant not appearing in person but

the Court having ordered said action to proceed in her absence under Sec. 52.35 of the Wis. Stats.; the defendant not appearing in person but the Court having ordered said action to proceed in his absence under Sec. 52.34 of the Wis. Stats., but having appeared by his guardian ad litem, John Malinowski; the defendant having heretofore on the 23rd day of February, 1972, entered a written plea admitting that he is the father of the child referred to in the complaint on file herein; proof having been submitted and the Court being fully advised in the premises, now, on motion of Karl M. Dunst, Assistant Corporation Counsel, it is

FOUND AND ADJUDGED

1. That the said complainant on the 5th, day of July, 1971, in the County of Milwaukee, State of Wisconsin, gave birth to a female child, since named Angela; that the child is now alive and being cared for by the complainant residing at 2592 South Burrell Milwaukee County, Wisconsin; that the complainant is not now (and never has been) married, that said child was born out of wedlock, and that by clear and satisfactory evidence, the said defendant is the father of the child delivered of said complainant on the date aforesaid.

1a. That the legal fee to the guardian ad litem appointed for said minor defendant is allowed in the sum of \$120.00; and said sum is hereby ordered to be paid to the Chief Deputy Clerk, County Court Civil Division, Milwaukee County, Wisconsin, for the Trustee, in the manner hereinafter set forth in this paragraph; and thereafter paid by such Trustee to said guardian ad litem,

Attorney John Malinowski
5617 West National Avenue
Milwaukee, Wisconsin;

(b) By the Treasurer of Milwaukee County, as an advance payment pursuant to Sec. 328.39, Wis. Stats., the Court being satisfied that the defendant is presently unable to compensate the guardian ad litem adequately for his services and expenses; such sum to be taxes, nevertheless, to defendant as an item of costs pursuant to Sec. 271.04(2), Wis. Stats., as amended. Upon payment of such costs said Chief Deputy Clerk, County Court Civil Division is hereby directed to reimburse the Treasurer of Milwaukee County for an advance payment by said Treasurer of such guardian ad litem fee.

2. That the lying-in expenses of said complainant and/or past support of said child, and the fee for complainant's attorney, if any, are allowed in the total sum of \$446.00, and the defendant is hereby directed and ordered to pay said sum to the Chief Deputy Clerk, County Court Civil Division, Milwaukee County, Wisconsin, for the Trustee, in the following manner: at the rate of \$11.00 per month, commencing as of the first day of July, 1972, and on the first day of each month thereafter until paid; and the said Chief Deputy Clerk is hereby directed and ordered to pay said sum to the following named persons, agencies or institutions in the following order and in the following amounts:

\$446.00 to Milwaukee County Department of Public Welfare

3. That the defendant is further ordered to pay and provide for the future support and maintenance of said child by payment of installments of \$109.00 per month, commencing as of the first day of July, 1972, until the child shall arrive at the age of eighteen years; that all such payments for the future support be made to the Chief Deputy Clerk, County Court Civil Division, Milwaukee

County, Wisconsin, for the Trustee and by him to the complainant or other person, agency or institution having custody of said child in installments of \$109.00 per month, as and for the child's support, the first payment to be made on the 5th day of July, 1972, and on the 5th day of each month thereafter.

4. That the Court orders that from the payments made by the defendant to the said Chief Deputy Clerk, County Court Civil Division either for past or future support, Milwaukee County shall be first reimbursed in the following order: for Court costs, guardian ad litem fees paid by Milwaukee County, and blood test, if any, before any other disbursements are made by the Trustees.

5. That said defendant pay to the Chief Deputy Clerk, County Court Civil Division of Milwaukee County, the costs and disbursements of this action (including costs of blood test, if any herein ordered).

6. In accordance with Sec. 59.42(10)(b) Wis. Stats. on January 1, 1972, and on each and every January 1st thereafter the defendant shall pay to the Chief Deputy Clerk of the County Court Civil Division the sum of \$10.00 to cover the cost of handling said trust account. The fee so collected shall be paid to the County Treasurer by the Chief Deputy Clerk of the County Court.

7. The said defendant, Roger Redhail, not having given a bond in accordance with Sec. 52.39 Wis. Stats., be and hereby is committed to the County Jail until he shall comply with and perform such judgment or shall be otherwise discharged according to law; the Court, however, hereby stays execution of such commitment and said execution of the commitment so stayed shall issue at any time when it shall appear to the Court that the defendant has defaulted on any of the provisions of the judgment.

8. The Chief Deputy Clerk, County Court Civil Division, is hereby directed and ordered to file with the State Registrar of Vital Statistics a certified copy of this judgment, with the following information concerning the defendant:

Residence 1348 South 3rd Street Age 18 Color Indian
Birthplace Milwaukee, Wisconsin Occupation Unknown

Dated this 17 day of May, 1972.

Approved:

/s/ Karl M. Dunst
Assistant Corporation Counsel

Date: May 16, 1972

By the Court,

/s/ Robert J. Miech
Judge of County Court Civil Division
of Milwaukee County, Wisconsin

Costs and Disbursements taxed at \$153.40 Dollars

Francis X. McCormack, Clerk of Circuit and County Courts

By: _____
Deputy Clerk

DECISION OF THE THREE-JUDGE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

Filed August 31, 1976 [Document No. 18]

This decision is printed in the Appendix to the Jurisdictional Statement at pages 1-22.

JUDGMENT ON DECISION BY THE COURT

Filed August 31, 1976 [Document No. 19]

This judgment is printed in the Appendix to the Jurisdictional Statement at page 23.

**NOTICE OF APPEAL. Filed October 28, 1976.
[Document No. 24]**

The notice of appeal is printed in the Appendix to the Jurisdictional Statement at page 24.